



**BellSouth Telecommunications, Inc.**

**Legal Department**  
1600 Williams Street  
Suite 5200  
Columbia, SC 29201

patrick.turner@bellsouth.com

**Patrick W. Turner**  
General Counsel-South Carolina

803 401 2900  
Fax 803 254 1731

June 21, 2004

The Honorable Bruce Duke  
Executive Director  
Public Service Commission of SC  
Post Office Drawer 11649  
Columbia, South Carolina 29211

RECEIVED  
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COMMUNICATIONS SECTION

Re: TC Systems, Inc. (Complainant/Petitioner) vs. BellSouth Telecommunications, Inc. (Defendant/Respondent)  
Docket No. 2004-118-C

Dear Mr. Duke:

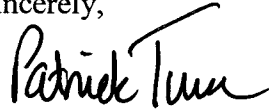
Enclosed for filing are the original and fifteen copies of BellSouth Telecommunications, Inc.'s ("BellSouth's") Answer to the Complaint and Request for Expedited Resolution of TC Systems, Inc. ("TCS").

As explained in the attached answer, TCS's allegations are simply wrong and, accordingly, the Public Service Commission of South Carolina ("Commission") should deny the relief that TCS seeks. In summary, BellSouth's position in this matter (which BellSouth has previously communicated to TCS) is that TCS may adopt the BellSouth/AT&T Agreement, subject only to the requirements that: (1) the reciprocal compensation provisions for Internet Service Provider ("ISP") traffic in the Local Interconnection Attachment are conformed to the Federal Communications Commission's ("FCC") Order on Remand and Report and Order in the FCC's ISP docket; and (2) the Unbundled Network Element ("UNE") Attachment of the Agreement is conformed to the FCC's Triennial Review Order ("TRO"). To allow carriers to continue to opt in to portions of an interconnection agreement that pre-date the FCC's ISP Order and the FCC's TRO and that do not comply with these Orders would be contrary to public policy in that it would perpetuate a non-compliant regime and prevent the industry from moving forward under the new rules.

The Honorable Bruce Duke  
June 21, 2004  
Page Two

By copy of this letter I am serving all parties of record with a copy of this motion as indicated on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink that reads "Patrick W. Turner". The signature is written in a cursive style with a large, stylized "P" and "T".

Patrick W. Turner

cc: F. David Butler, Esquire  
Florence Belser, Esquire  
John J. Pringle, Jr., Esquire  
Gene V. Coker, Esquire

Enclosures  
PC Docs #541161

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

IN RE:    TC Systems, Inc.  
             Complainant/Petitioner

vs.

BellSouth Telecommunications, Inc.  
             Defendant/Respondent

Docket No. 2004-118-C

**ANSWER OF BELL SOUTH TELECOMMUNICATIONS, INC. TO THE  
COMPLAINT AND REQUEST FOR EXPEDITED RESOLUTION  
OF TC SYSTEMS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth"), by and through its undersigned counsel, hereby files its Answer to the Complaint filed by TC Systems, Inc. ("TCS"). According to the Complaint, TCS is a wholly owned subsidiary of AT&T Corp. and an affiliate of AT&T Communications of the Southern States, LLC. TCS alleges that BellSouth has violated its obligations under 47 U.S.C. § 252(i) by denying TCS's request to opt into the entirety of the BellSouth/AT&T Communications of the South Central States, LLC Interconnection Agreement ("BellSouth/AT&T Agreement") which was effective on or about December 21, 2001.

As explained more fully below in the "Affirmative Defenses" portion of this pleading, TCS's allegations are simply wrong and, accordingly, the Public Service Commission of South Carolina ("Commission") should deny the relief that TCS seeks. In summary, BellSouth's position in this matter (which BellSouth has previously communicated to TCS) is that TCS may adopt the BellSouth/AT&T Agreement, subject only to the requirements that: (1) the reciprocal

compensation provisions for Internet Service Provider (“ISP”) traffic in the Local Interconnection Attachment are conformed to the Federal Communications Commission’s (“FCC”) Order on Remand and Report and Order in the FCC’s ISP docket<sup>1</sup>; and (2) the Unbundled Network Element (“UNE”) Attachment of the Agreement is conformed to the FCC’s Triennial Review Order (“TRO”).<sup>2</sup> To allow carriers to continue to opt into portions of an interconnection agreement that pre-date the FCC’s ISP Order and the FCC’s TRO and that do not comply with these Orders would be contrary to public policy in that it would perpetuate a non-compliant regime and prevent the industry from moving forward under the new rules.

### **SPECIFIC RESPONSE**

Responding to the numbered paragraphs of TCS’s Complaint, BellSouth alleges and states as follows:

### **INTRODUCTION**

1. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Complaint and, therefore, can neither admit nor deny these allegations at this time.

2. The allegations set forth in Paragraph 2 of the Complaint require neither a denial nor an admission by BellSouth.

3. BellSouth admits the allegations set forth in Paragraph 3 of the Complaint.

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<sup>1</sup> Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, 16 FCC Rcd 9151 (April 18, 2001) (“ISP Order”).

<sup>2</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Service Offering Advanced Telecommunications Capability*, 2003 WL 22175730 (F.C.C.), 30 Communications Reg. (P&F) 1 (Rel. August 21, 2003).

### **FACTUAL BACKGROUND**

4. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Complaint and, therefore, can neither admit nor deny these allegations at this time.

5. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Complaint and, therefore, can neither admit nor deny these allegations at this time.

6. Based on pleadings that are on file with the Commission, BellSouth admits the allegations set forth in the first sentence of Paragraph 6 of the Complaint. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in Paragraph 6 of the Complaint and, therefore, can neither admit nor deny these allegations at this time.

7. BellSouth admits that separate legal entities must have their own interconnection agreements with BellSouth. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in Paragraph 7 of the Complaint and, therefore, can neither admit nor deny these allegations at this time.

8. BellSouth admits only that it received a letter dated February 25, 2004 from AT&T regarding a request for **TCG Systems, Inc. ("TCG")**, and that letter speaks for itself. BellSouth denies the remainder of the allegations set forth in Paragraph 8 of the Complaint.

9. BellSouth admits that after the effective date of the FCC's TRO, BellSouth sent "change of law" notices to all companies with which it has interconnection agreements that were affected by the TRO. BellSouth denies the remainder of the allegations set forth in Paragraph 9 of the Complaint.

10. BellSouth admits that it sent a letter dated March 8, 2004, to AT&T regarding a request for **TCG Systems, Inc. ("TCG")**, and that letter speaks for itself. BellSouth denies the remainder of the allegations set forth in Paragraph 10 of the Complaint.

11. BellSouth admits that it received a letter dated March 10, 2004 from AT&T regarding a request for TCS, and that letter speaks for itself. BellSouth denies the remainder of the allegations set forth in Paragraph 11 of the Complaint.

12. BellSouth admits that it sent a letter dated March 18, 2004 to AT&T regarding a request for TCS, and that letter speaks for itself. BellSouth denies the remainder of the allegations set forth in Paragraph 12 of the Complaint.

13. BellSouth admits that it received a letter dated March 29, 2004 from AT&T regarding a request for TCS, and that letter speaks for itself. BellSouth denies the remainder of the allegations set forth in Paragraph 13 of the Complaint.

14. BellSouth admits that it sent a letter dated April 2, 2004 to AT&T regarding a request for TCS, and that letter speaks for itself. BellSouth denies the remainder of the allegations set forth in Paragraph 14 of the Complaint.

### **DISCUSSION**

15. The referenced provision of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"), speaks for itself and requires no specific response from BellSouth.

16. The referenced provision of the FCC's Rules speaks for itself and requires no specific response from BellSouth.

17. BellSouth admits only that it is a party to the Interconnection Agreement between BellSouth Telecommunications, Inc. and AT&T of the South Central States and that the

Agreement has been deemed approved by the Commission and has not expired. BellSouth denies the remainder of the allegations set forth in Paragraph 17 of the Complaint.

18. BellSouth denies the allegations of Paragraph 18 of the Complaint.

19. BellSouth denies the allegations of Paragraph 19 of the Complaint.

20. BellSouth denies the allegations of Paragraph 20 of the Complaint.

21. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 21 of the Complaint. BellSouth expressly denies, however, that the document attached as Exhibit "A" to the Complaint has been "executed by TCS" or by any entity. The document attached as Exhibit "A" speaks for itself.

22. BellSouth denies the allegations of Paragraph 22 of the Complaint.

#### **PRAYER FOR RELIEF**

23. BellSouth denies that TCS is entitled to any relief whatsoever in this proceeding, including any and all relief sought in the unnumbered paragraph on the first page of the Complaint or in the unnumbered paragraph of the Complaint entitled "Prayer for Relief."

24. Any and all allegations not expressly admitted in this Answer are hereby denied.

#### **AFFIRMATIVE DEFENSES**

BellSouth asserts the following affirmative defenses to the allegations set forth in the Complaint:

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim for which relief can be granted.

## **SECOND AFFIRMATIVE DEFENSE**

The Complaint should be dismissed or, in the alternative, at least stayed, because on April 26, 2004, TCS provided BellSouth notice pursuant to Section 1.721(a)(8) of Federal Communications Commission ("FCC") rules, 47 C.F.R. §1.1721 (a)(8), of its intent to pursue relief in this same matter before the FCC. BellSouth asserts that the FCC is the more appropriate forum since the rules cited and relied upon by TCS in this proceeding were promulgated by the FCC. Further, conducting dual proceedings is inefficient, wasteful of this Commission's time and resources, and could lead to inconsistent results or lead to this Commission's decision subsequently being preempted by the FCC.

## **THIRD AFFIRMATIVE DEFENSE**

Pursuant to the FCC's Order on Remand in the ISP docket,<sup>3</sup> only those telecommunications carriers who were exchanging traffic with BellSouth in a particular state as of the first quarter of 2001 are eligible to collect reciprocal compensation for ISP-bound traffic. The BellSouth/AT&T Agreement permits AT&T to collect reciprocal compensation for ISP-bound traffic in accordance with the rates, terms and conditions specified by the FCC in the ISP Order on Remand. Pursuant to the express terms of that Order, a new CLEC such as TCS is not entitled to such compensation. Thus, by law, TCS is not entitled to adopt the provisions of Attachment 3 of the BellSouth/AT&T Interconnection Agreement dealing with compensation for ISP-bound traffic.

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<sup>3</sup> Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68. 16 FCC Rcd 9151 (April 18, 2001) ("ISP Order").



#### **FOURTH AFFIRMATIVE DEFENSE**

Pursuant to Rule 51.809(c), TCS has failed to exercise its rights to adopt the BellSouth/AT&T Agreement without modification within a reasonable period of time. Rule 51.809(c) provides that BellSouth is only obligated to make interconnection agreements available for 252(i) adoption “*for a reasonable period of time* after the approved agreement is available for public inspection.” 47 C.F.R. § 51.809(c) (emphasis added). The reasonable period of time in which TCS had to adopt the provisions in Attachment 3 of the BellSouth/AT&T Agreement dealing with reciprocal compensation for ISP-bound traffic without modification expired on the effective date of the FCC’s Order on Remand and Report and Order in the ISP docket. In that Order, the FCC confirmed that the “reasonable period of time” during which interconnection agreements may be adopted **expires** upon the publication of an FCC order altering the regulatory regime.

#### **FIFTH AFFIRMATIVE DEFENSE**

Pursuant to Rule 51.809(c), TCS has failed to exercise its rights to adopt the BellSouth/AT&T Agreement without modification within a reasonable period of time. Rule 51.809(c) provides that BellSouth is only obligated to make interconnection agreements available for 252(i) adoption “*for a reasonable period of time* after the approved agreement is available for public inspection.” 47 C.F.R. § 51.809(c) (emphasis added). The reasonable period of time in which TCS had to adopt the provisions in Attachment 2 of the BellSouth/AT&T Agreement dealing with UNEs expired no later than October 2, 2003, which was the effective date of the FCC’s TRO, and could have expired as early as August 20, 2003, which was the date the TRO was released. At the latest, after October 2, 2003, portions of Attachment 2 of the Interconnection Agreement dealing with UNEs no longer were in compliance with the law, and

thus, the reasonable adoption period for the Agreement, without amendment to conform to the law, **expired**. The FCC's ISP Order confirms that the "reasonable period of time" during which agreements may be adopted expires upon the publication of an FCC order altering the regulatory scheme. In the ISP case, the FCC established a new interim compensation regime for ISP traffic and recognized the danger of perpetuating the old compensation regime via carriers opting into agreements that predated the FCC's ISP Order. The FCC expressly stated that "[w]e conclude that any 'reasonable period of time' for making available rates applicable to the exchange of ISP-bound traffic **expires** upon the [Federal Communications] Commission's adoption in this Order of an intercarrier compensation mechanism for ISP-bound traffic." *ISP Order* at fn. 155. The FCC further noted in its ISP Order that "[t]o permit a carrier to opt into a reciprocal compensation rate higher than the caps we impose here [i.e. with respect to TCS's request here to opt-in to an old non-compliant interconnection agreement] during that window would seriously undermine our effort to curtail regulatory arbitrage and to begin a transition from dependence on intercarrier compensation and toward greater reliance on end-user recovery." *Id.* at fn. 154. The same rationale controls the requested opt-in to Attachment 2. The reasonable time to opt into pre-TRO agreements with provisions that are inconsistent with the effective portions of the TRO expired, at the latest, with the effective date of the TRO. To allow carriers to continue to opt into such portions of pre-TRO agreements that contain provisions that are noncompliant with current law would be contrary to public policy in that it would perpetuate a non-compliant regime and prevent the industry from moving forward under the new rules.

WHEREFORE, BellSouth respectfully requests that the Commission enter an Order:

- (1) Denying all of the relief requested by TCS in the Complaint and dismissing the Complaint with prejudice; and
- (2) Granting such further relief as the Commission deems fair and equitable.

Respectfully submitted, this 21<sup>st</sup> day of June, 2004.

A handwritten signature in black ink, appearing to read "Patrick W. Turner", written over a horizontal line.

Patrick W. Turner  
1600 Williams Street, Suite 5200  
Columbia, South Carolina 29201  
ATTORNEY FOR BELL SOUTH  
TELECOMMUNICATIONS, INC.

STATE OF SOUTH CAROLINA       )  
  )  
COUNTY OF RICHLAND            )

CERTIFICATE OF SERVICE

The undersigned, Jeanette B. Mattison, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. and that she has caused BellSouth Telecommunications, Inc.'s Answer of BellSouth Telecommunications, Inc. to the Complaint and Request for Expedited Resolution of TC Systems, Inc. in Docket No. 2004-118-C to be served upon the following this June 21, 2004:

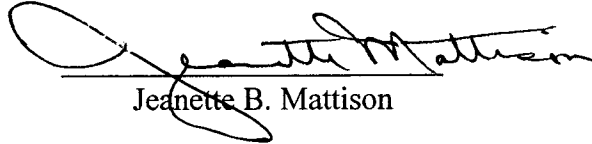
F. David Butler, Esquire  
General Counsel  
S. C. Public Service Commission  
Post Office Box 11649  
Columbia, South Carolina 29211  
(PSC Staff)  
**(U. S. Mail and Electronic Mail)**

Florence P. Belser, Esquire  
Attorney IV  
S. C. Public Service Commission  
Post Office Box 11649  
Columbia, South Carolina 29211  
(PSC Staff)  
**(U. S. Mail and Electronic Mail)**

John J. Pringle, Jr., Esquire  
Ellis Lawhorne & Sims, P.A.  
Post Office Box 2285  
Columbia, South Carolina 29202  
(TC Systems, Inc.)  
**(U. S. Mail and Electronic Mail)**

2004 JUN 21 PM 3:39  
SC Public Service  
Commission  
FILED

Gene V. Coker, Esquire  
Law & Governmental Affairs  
AT&T  
1200 Peachtree Street, NE, Suite 8100  
Atlanta, GA 30309  
**(U. S. Mail and Electronic Mail)**



Jeanette B. Mattison

PC Docs #541160